NO._____ 00151 FEB 26 2001

IN THE
SUPREME COURT OF THE
UNITED STATES

LEWIS BANKS and BEVERLY BANKS,
PETITIONERS,

v.

STONEYBROOK APARTMENTS,
RESPONDENT,

ON THE PETITION FOR A WRIT CERTIORARI TO
FROM THE UNITED STATES COURT OF
APPEALS FOR THE FORTH CIRCUIT

PETITION FOR A WRIT CERTIORARI

LEWIS BANKS
BEVERLY BANKS
3204 ANVIL PLACE
GREENSBORO, NC 27407
336-852-1684

QUESTION PRESTENTED

Mr. Lewis Banks and Mrs. Beverly Banks was reported of owning Stoneybrook apartments of a delinquent payment of $1,284.00 in one months time. The petitioners rent was only $605.00 a month. Stoneybrook apt. reported the petitioners to the Credit Bureau. That false report was in the petitioners credit for over Two (2) years. It was placed into the Banks' Credit Report intentionally.

1. Do a consumer have the Private Right Of Action under the Federal Fair Credit Reporting Act, if the consumer filed a complaint of violations under Section 1681n and 1681o of the (FCRA)?

2. If a person have the authority or access to report a consumers delinquent debt to the Credit Bureau, will that person be consider a Furnsher of Information?

3. If a consumer file a complaint under 1681n and 1681o of the (FCRA), and used others section of the FCRA to show more violations that was committed, will that be grounds to dismiss a complaint for using other sections of the (FCRA)?

4. Can a Federal Civil case be Dismiss for Federal Local Rule 12(b)(6) Failure to state a claim upon which relief can be granted, if the complaint show tangible proof and outstanding merits?

5. Whether the District Court erred when they did not consider what was raised in the Plaintiffs brief a claim that stoneybrook violated North Carolina's Unfair and Deceptive Trade Practice Act, N.C. Gen. Stat. § 75-1.1?

6. Whether the District Judge erred when he stated that the Plaintiffs pointed to no specific provisions of the FCRA that Stoneybrook violated?

LIST OF PARTIES

[*] All parties do not appear in the caption of the case on the cover page. A list of parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Stanely Leugh Rodenbiugh IV. Esq.
   Brooks, Pierce, Mclendor, Humphrey & Leonard
   2000 Renaissance Plaza
   230 North Elm Street P. O. Box 26000
   Greensboro, NC 27420
   336-373-8850

2. Harold Arthur Bolick II, Esq.
   Brooks, Pierce, Mclendor, Humphrey & Leonard
   2000 Renaissance Plaza
   230 North Elm Street P. O. Box 26000
   Greensboro, NC 2742
   336-373-8850

TABLE OF CONTENTS

1. QUESTIONS PRESENTED.....i

2. LIST OF PARTIES.....ii

3 TABLE OF CONTENTS AND INDEX OF APPENDIX.....iii

4. TABLE OF AUTHORITIES CITED iv

5. OPINIONS BELOW.....1

6. JURISDICTION.....1

7. CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....2

8. STATEMENT OF THE CASE.....2

9. REASON FOR GRANTING THE WRIT.....9

10. CONCLUSION.....10

11. APPENDIX.....App. i

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

Edward's v. City of Goldsboro,
178 F.3d 231, 244 (4th Cir. 1999).....3

Conley v. Gilbson, 355 U.S. 41, 45-46 [1957].....3

Lucien v. Preiner,
967 F.2d 1166, 1168 [7th Cir. 1992].....3

Republican Party v. Martin,
980 F.2d 943, 952 (4th Cir. 1992].....3

Maple Lanes, Inc. v. Messer,
186 F.3d 823, 824-25 [7th Cir. 1994].....3

Harrison v. United States Postal Service,
840 F. 2d, 1149 1152 (4th Cir. 1988].....4

Dornhecker v. Ameritech Corp.,
99 F.Supp.2d 918, 928 [N.D. I11. 2000.....6

STATUTES AND RULES

15 U.S.C. §§ 1681-1681u.....3

Federal Rules of Civil Procedure 12 (b)(6).....3

15 U.S.C. § 1681n, ..
Civil Liability for Noncompliance.....3, 9

15 U.S.C. § 1681o, ..
Civil Liability for Negligent Noncompliance.....3, 9

15 U.S.C. § 1681s-2, section 623[a][1][A],.....4

15 U.S.C. § 1681a, sec. 603[b].....4

15 U.S.C. § 1681a [f],.....4

15 U.S.C. § 1681h, [b][2][e],.....4

609, 610, or 615 [§ § § 1681g, 1681h, or 1681m,..... 4

15 U.S.C § 1681p,.....5

15 U.S.C. § 1681i. Section 611,.....5

15 U.S.C. § 1681s-2[b],.....6

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[*] For cases from **federal court**:

The opinion of the United States court of appeals appears at Appendix __A__ to the petition and is unpublished.

The Opinion of the United States district court appears at Appendix __B__ to the petition and is unpublished.

JURISDICTION

The Judgment of the District Court was entered on June 1, 2000. A notice of appeal was filed on July, 12, 2000, the case was Docket on this date [4th Cir., No. 00-1893]. On October 19, 2000, Judgment was entered. The Appellant filed a Petition for Rehearing and a Rehearing en banc, October 31, 2000, Judgment was entered November 28, 2000, [00-1893]. The jurisdiction of this invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Appeal from the United States District Court for the Middle District of North Carolina, Greensboro, District Judge, William L. Olsteen, argued July 1, 1999, and was decided June 1, 2000. , [CA-99-561-1].

Then filed with the United States Appeal for the Fourth Circuit Court, before William and Motz, Circuit Judges and Hamilton, Senior Circuit Judge. Submitted October 12, 2000, decided October 19, 2000. Affirmed by unpublished per curiam opinion, [00-1893].

Then filed a [1]Petition for Rehearing and a Petition for Rehearing en banc. Submitted October 31, 2000 and was denied November 28, 2000, [00-1893]. Mandate was issued January 18, 2001, [00-1893].

In the [2]Memorandum Opion, by District Judge William L. Olsteen, filed June 1, 2000, the Supreme Court will see that the evidence that the Plaintiff's presented went unnoticed. On the first page of the (Memo. Op.) Judge Olsteen stated "that the Plaintiffs filed this action against the Defendant Stoneybrook Apartment.

---

[1] Appendix C, Opinion of Petition for Rehearing and Rehearing en banc, and App. D, Mandate decided. In the app. Pages 4, 5.

[2] App. E, Memorandum Opinion of the United State Court for the Middle District of North Carolina, Greensboro, Filed June 1, 2000, app. Page 6.

Alleging that Stoneybrook violated the Fair Credit Reporting Act" here " (FCRA) *15 U.S.C. §§ 1681-1681u"*, requirement imposed under this title with respect to the consumer is liable to that consumer.

The Plaintiff's Lewis and Beverly Banks filed under 15 U.S.C. § 1681n, Civil Liability for Noncompliance; (a) Any person who is willfully in failing to comply with any

Also under filed under 15 U.S.C. § 1681o, Civil Liability for Negligent Noncompliance: (a) Any person who is negligent in failing to comply with any requirement imposed under this title with respect to the consumer is liable to that consumer.

On (page 2, Memo. Op.) On a motion to dismiss under Federal Rules of Civil Procedure 12 (b)(6) the court accept all well-pleaded allegations as true and draws all reasonable inference in the Plaintiff's favor, *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

A complaint should not be dismissed unless "it appears beyond doubt that the Plaintiff can prove no set of in support of his claim which would entitle him to relief, *Conley v. Gilbson*, 355 U.S. 41, 45-46 [1957].

However, to withstand a motion to dismiss, a complaint must allege facts sufficiently setting forth the essential elements of the cause of the action, see *Lucien v. Preiner*, 967 F.2d 1166, 1168 [7th Cir. 1992].

The purpose of a Rule 12 (b)(6) motion is to test sufficiency of a complaint; importantly, [a Rule 12(b)[6] motion] does not resolve contests surrounding the facts, the merits of the applicability of a defenses.

Republican Party v. Martin, 980 F.2d 943, 952 (4th Cir. 1992]. Accordingly, a Rule 12 [b][6] motion should only be granted if, after accepting all well-pleaded allegations in the Plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the Plaintiff's favor, see *Maple Lanes, Inc. v. Messer*, 186 F.3d 823, 824-25 [7th Cir. 1994].

Furthermore, when as here, a Rule 12[b][6] motion is testing the sufficiency of a civil rights complaint. We must be especially solicitous of the wrongs alleges and "must not dismiss the complaint unless it appears to certainty that the Plaintiff would not be entitled to relief.

Under any legal theory which might plausibly be suggested by the facts alleged" *Harrison v. United States Postal Service*, 840 F. 2d, 1149 1152 (4th Cir. 1988].

On [3][p.3, Memo. Op. 1st ¶] Judge Olsteen stated that "Plaintiffs has alleged that the actions of Stoneybrook in reporting past-due rent to the Credit Bureau violated the FCRA. Plaintiffs point to no specific provisions of the FCRA that Stoneybrook had violated.

That is not the truth of the matter. In fact the Plaintiffs showed the court several violations that the Defendant violated. [4]On [p.2, of my response filed August 13, 1999] under statement of facts; Responsibilities of Furnisher of Information to Consumer Reporting Agencies, 15 U.S.C. § 1681s-2, section 623[a][1][A], Reporting information with actual knowledge of errors.

A person shall not furnish any information relating to a consumer to any consumers reporting agency if the person knows or consciously avoids knowing that the information is inaccurate. In 15 U.S.C. § 1681a, section 603[b], The term "person" means any individual, partnership, corporation, trust, estate cooperative, association, governmental subdivision or agency, or other entity.

Under 15 U.S.C. § 1681a [f], [A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnisher consumer reports to the third parties.

And which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. In section 15 U.S.C. § 1681h, [b][2][e], Limitation of liability as provided in section 616 and 617 [§ § 1681n and 1681o] of this title.

No consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency; any user of information, or any person who furnishes information to a consumer reporting

---

[3] Appendix E,

agency, based on information.

Based on information disclosed pursuant to section 609, 610, or 615 [§ § 1681g, 1681h, or 1681m] of this title or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action.

Based in whole or in part on the report, [except as to false information furnished with malice or willful intent to injure such consumer]. In the same ¶, Judge Olsteen, stated that Stoneybrook argues the FCRA does not support a private cause of action for the Plaintiff claim.

In the provisions provided in my response on [4][p.7, 2nd ¶], *15 U.S.C § 1681p*, Jurisdiction of Courts; Limitation of Action, any action to enforce any liability created under this subchapter may be brought in any appropriate United States District Court without regard to the amount in controversy.

The individual of the misrepresentation may bring the action at any time within two years after discovery. The Plaintiff's had all rights to bring action to any court of Law.

The Plaintiff also submitted a [5] letter from the Federal Trade Commission, on [p.2 last ¶], This letter informed the Plaintiff that the [FTC] could not act as our lawyer or intervene in a dispute between a consumer and a credit bureau or between a consumer and a creditor or furnisher of information.

The private enforcement provisions of the FCRA permit the consumer to bring a civil suit for willful noncompliance with the Act.

You may receive actual damages or punitive damages up to $1,000 for willful noncompliance [Section 616], you may also sue foe negligent noncompliance and recover actual damages sustained by you [Section 617]. Judge Olsteen, stated that the Plaintiff did not try to make attempt to dispute the claim of the amount of $1,284.00.

That was not the case in 15 U.S.C. § 1681i. Section 611, Procedure in case of the Disputed Accuracy; [a] Reinvestigation of Disputed Information: [2] Prompt notice of

---

[4] The Plaintiffs Response filed August 13, 1999.

[5] Appendix F, Letter from the United States Trade Commission, Dated: August 5, 1999, app. p, 11,also marked as exhibit [19] in my response.

Dispute to furnisher of information; [A] In general: Before the expiration of the Seven business days.

Period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph [1] the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person.

In this [6]letter that the Credit Bureau Information Service, [CBIS] Law Firm that handle the change of which was recorded. On the [1st p. 3rd ¶], It states "We received notification from you on May 6, 1999 that you disputed the Stoneybrook entry and contended that your account with Stoneybrook should reflect a zero balance".

The Middle District Judge Olsteen, and the Fourth Circuit Judges Williams, Motz, and senior circuit Judge Hamilton, over looked the evidences that I presented in my case which is marked exhibit 19. Under *15 U.S.C. § 1681s-2[b]*, Duties of furnisher of information upon notice of dispute, [A] conduct an investigation with respect to the dispute information.

In order to trigger a furnisher's duty to undertake an investigation upon receipt of notice of dispute from the consumer reporting agency that credit information is disputed, Dornhecker v. Ameritech Corp., 99 F.Supp.2d 918, 928 [N.D. I11. 2000].

Therefore in order to state a claim for relief *under § 1681s-2[b]*, the Plaintiff must alleged that the furnisher of information received notice of a disputed credit entry. The Plaintiff proved to the court that Stoneybrook was aware of the dispute. The letter from the [CBIS] Law Firm confirms that.

On [p.4, Memo Op. 2nd ¶ 6 lines down], Judge Olsteen, stated "Plaintiffs allege that Stoneybrook misreported the rent Plaintiff owed for August and September 1997. Stoneybrook asked Credit Bureau to remove some of the Plaintiffs debt from its records in October 1997 and in May 1999 requested all debt owed by the Plaintiff be removed.

---

[6] App. G, Letter from the Law Firm that handles the Credit Bureau affairs, AdamKleemeier Hagan Hannah & Fouts, Dated 6/28/1999, app. p.12

That is not the case the Plaintiff submitted evidence to the court that Stoneybrook did not contact the credit bureau until the Plaintiffs contacted the Credit agency in a dispute first. Then the Plaintiff sent Stoneybrook Apartments a certified letter to remove that false report from my credit report the date that Stoneybrook signed for it was May 10, 1999.

The Plaintiff submitted more evidences to support the allegations that Stoneybrook will be the only one holding two Universal Data Forms here after [UDF]. Those two [UDF] that Stoneybrook alleged submitting to the [CBIS] was one of the reason why Judge Olsteen, made this statement.

On [p.4, 2nd ¶ of Memo. Op. Judge Olsteen] "Stoneybrook asked the Credit Bureau to remove some of the Plaintiff's debt from its records in October 1997 and in May 1997 requested all debt owed by Plaintiffs be removed". Judge Olsteen and the Fourth Circuit overlooked the evidences that the Plaintiff submitted.

In fact, no one has any records of those [UDF] only Stoneybrook. In that letter from the Law Firm that handles [CBIS] affairs showed Judge Olsteen, and the Fourth Circuit Judges, see. the Law Firm letter "our records do not reflect that we received any subsequent request for changes from Stoneybrook in 1997 or 1998".

On [p.5, Memo. Op. District Judge Olsteen], stated that the Plaintiff "did not try to contact or contest the amount that Stoneybrook stated that we owed $1,284.00 in the month of August 1997.

That was not the case several times the Plaintiff prove to the Court in their complaint filed July 1, 1999, and their response filed August 13, 1999, that we did not owe Stoneybrook that total of $1,284.00 for the month of August 1997 or anytime.

In the Plaintiffs response filed August 13, 1999, [7][p.2, statement of facts, 2nd ¶], "On the 15th of August 97, Ms. Garrison, manager of Stoneybrook Apartment filed court papers on Lewis and Beverly Banks, for non-payment of rent in the amount of $605.00 for rent and $30.25 for late fees, 13

---

[7] Appendix H, States of N.C. Court County of Guilford Small Claims Complaint in Summary Ejectment Filed Aug. 15, 1997, app.p14.

and court cost. Exhibit [1] Attachment

In the same response [p.3, 1st ¶], "On the 25th of Aug. 97, Honorable Judge Melban, ruled in our favor Lewis and Beverly Banks, stating that the Plaintiff Ms. Garrison, manager of Stoneybrook has failed to prove the case by the greater weight of the evidence and that this action be dismissed without prejudice. "The time that it was filed was 25th of Aug. at 11:33 am.

[8]The amount of rent to date 0, the amount of damages 0, Total amount 0, . On the same day and time 11;33 am, Ms. Garrison filed court papers again for non-payment. The amount is still the same not $1,284.25. Exhibits [2-3]"

Nowhere can you find that the Plaintiffs owed Stoneybrook, not in the courts documents not in the Credit Bureau, the only place you will find that amount of $1,284.00 was in our credit report filed August 1997, by Stoneybrook Apartmemt.

In September 5, 1997, the court ruled in there favor again the amount of rent that Stoneybrook was asking for was $605.OO. On September 15th, 1997 Lewis and Beverly Banks filed a Bond To Stay Execution On Appeal Of Summary Ejectment Judgment, and we served them on Stoneybrook with a counterclaim.

On March 13, 1998, [9]ORDER OF JUDGMENT by Honorable Patrice Hinnant, District Court Judge Presiding, ruled that "neither party have and recover any further amounts from the other", Stoneybrook did not take that into consideration. In March of 98, the Plaintiff asked the attorney for Stoneybrook Apartment, Mr. H. Arthur Bolick II.

To inform the managers that I, Lewis Banks, would like to have a [10]letter from them stating that we owe Stoneybrook a zero balance. The Petitioner is submitting to the Supreme Court evidences that the Plaintiff submitted to

---

[8] App. I, States of N.C. Court County oi Guilford Small Claims, Judgment in Action for Summary Ejectment, Filled Aug. 25, 97. app.p15.

[9] App. J, Order of Judgment States of N.C. Court County of Guilford Small Claims, Dated March 13, 1998. App.p.16.

[10] App. K, letter from Stoneybrook Apartmemt Dated April 2, 1999. app.p.18.

Middle District Court, and that the Appellant submitted to the Fourth Circuit Courts of Appeals.

REASON FOR
GRANTING THE PETITION

If the District Judge, Williams L. Olsteen would have taken the evidence that the Plaintiffs submitted in their claim the Judgment would have been for the Plaintiffs. The Banks family prove to the Court that the Plaintiffs do have a Private Right Of Action under the Fair Credit Reporting Act.

We prove to the Court that Stoneybrook Apartment is a Creditor who furnishes information to the credit bureau, in this case it was false information. We prove to the courts that Stoneybrook was very much aware the Plaintiffs did not owe Stoneybrook the amount of $1,284.00 in the month of August 1997 nor at anytime.

We prove to the courts after Stoneybrook lost the case in August 1997 for rent of $605.00. Ms. Garrison reported the Plaintiffs to the Credit Bureau as a delinquent. This was done with Malice with a willful intent to injure to do harm to my family and me.

Under 15 U.S.C. § 1681n, Civil Liability for Noncompliance, 15 U.S.C. § 1681o, Civil Liability for Negligent Noncompliance the Plaintiffs prove to the court that Stoneybrook Apartments, Willful Neglected to stay in Compliance with the FCRA. Stoneybrook acted with Recklessness, Vindictive motive, and violated the Plaintiffs Civil Rights and violated the FCRA rules.

CONCLUSION

The petition for a writ certiorari should be granted.

Respectfully submitted,

LEWIS BANKS
BEVERLY BANKS
3204 ANVIL PLACE
GREENSBORO, NC 27407
336-852-1684

APPENDIX

page

A. APPENDIX- Unpublished Opinion of the United States Court of Appeals for the Fourth Circuit Filed October 12, 2000. .....A-1

B. APPENDIX- Judgment of the United States Court for the Middle District of North Carolina, Filed June, 1, 2000.....A-3

C. APPENDIX- Opinion of the Petition for Rehearing and Rehearing en banc, United States Court of Appeals for the Fourth Circuit Filed October 29, 2000. Decided November 18, 2000.....A-4

D. APPENDIX- Opinion of the Mandate, decided November 18, 2000, of the United States Court of Appeals for the Fourth Circuit.....A-5

E. APPENDIX- Memorandum Opinion, of the United States Court for the Middle District of North Carolina, Filed June 1, 2000.....A-6

F. APPENDIX- Letter from the United States Federal Trade Commission, Dated August 5, 1999.....A-11

G. APPENDIX- Letter from the Law Firm that handles the Credit Bureau affairs, ADAM KLEEMEIER HAGAN HANNAH & FOUTS PLLC. Dated June 28, 1999.....A-12

H. APPENDIX-. State of North Carolina Court County of Guilford Small Claims, Complaint in Summary Ejectment, Filed, and August 15, 1997.....A-14

I. APPENDIX- State of North Carolina Court County of Guilford Small Claims, Judgment in Action for Summary Ejectment, Filed, August 25, 1997. .....A-15

J. APPENDIX- Order of Judgment, State of North Carolina Court County of Guilford Small Claims, Dated March 13, 1998.....A-16

K. APPENDIX- A letter from Stoneybrook Apartment stating that our balance is zero, Dated: April 2, 1998.....A-18

APPENDIX – A
UNPUBLISHED
UNITRD STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-1893

LEWIS BANKS; BEVERLY BANKS,
Plaintiffs-Appellants,

Versus

STONEYBROOK APARTMENT,
Defendant-Appelee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham, William L. Osteen, District Judge. (CA-99-561-1)

Submitted: October 12, 2000 Decided: October 19, 2000

Before William and Motz, Circuit Judges, and Hamilton, Senior

---

Circuit Judge.

Affirmed by unpublished per curiam opinion.

Lewis Banks, Beverly Banks, Appellants Pro Se. Stanley Leigh Rodenbough, IV, Harold Arthur Bolick, II, BROOK, PIERCE, MCLENDON, HUMPHREY & LEONARD, Greensboro, North Carolina, for Appellee.

Unpublished opinion are not binding precedent in this circuit. See Rule 36 (c).

PER CURIAM:

Lewis and Beverly Banks appeal from the district court's order dismissing their complaint filled under the Fair Credit Reporting Act, 15 U.S.C.A. §§ 1681-1681u (West

Supp. 2000). Our review of the record and the district court's opinion discloses no reversible error.

Accordingly, we affirm on the reasoning of the district court. see Banks v. Stoneybrook Apartment, No. CA-99-561-1 (M.D.N.C. June 1, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX – B

IN THE UNITED STATES COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
JUNE 1, 2000

LEWIS BANKS and BEVERLY BANKS,
Plaintiffs,

v. 1:99-CV-00561

STONEYBROOK APARTMENT,
Defendant,

JUDGMENT

OSTEEN, DISTRICT JUDGE

For the reason set forth in the memorandum opinion entered contemporaneously herewith,

IT IS ORDERED that the Defendant Stoneybrook Apartment's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted [7] granted.

IT IS FURTHER ORDERED that the Defendant's Objection and Motion to Strike Plaintiffs' Sur-Reply Brief [15] is dismissed as moot.

IT IS FURTHER ORDERED that the Plaintiffs Lewis Banks and Beverly Banks' Motion to Continue with Pretrial Conference [18] is dismissed as moot.

This the 1 day June 2000.

"s/ William L. Osteen"
United States District Judge

APPENDIX -C
UNITED STATES COURT OF APEALS
FOR THE FOURTH CIRCUIT

FILED
November 28, 2000
No. 00-1893
CA-99-561-1

LEWIS BANKS : BEVERLY BANKS
Plaintiff – Appellants

v.

STONEYBROOK APARTMENT
Defendant – Appellee

On Petition for Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this panel reguested a poll on the petition for rehearing en banc, and as the panel considered the petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

"s/ Patricia S.Connor"

CLERK

APPENDIX - D
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 18, 2000

MANDATE

The judgment of this Court dated 10/19/00 takes effect today.

PATRICIA S. CONNOR
CLERK

APPENDIX - E
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
June 1, 2000

LEWIS BANKS and BEVERLY BANKS,
Plaintiffs,

v. 1:00CV00561

STONEYBROOK APARTMENT,
Defendant.

MEMORANDUM OPINION

OSTEEN, District Judge

Plaintiffs Lewis Banks and Beverly Banks (Plaintiffs), acting pro se, filed this action against Defendant Stoneybrook Apartments (Stoneybrook) alleging that Stoneybrook violated the Fair Credit Reporting Act (FCRA), 15 U. S. C. § § 1681-16811u (West Supp. 1999). [1] Stoneybrook filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Objection and Motion to Strike Plaintiffs' Sur-Reply Brief.

For the reason stated herein, the court will grant Stoneybrook's motion to dismiss. [2]

FACTUAL BACKGROUND

---

[1] Plaintiffs raised in their brief a claim that Stoneybrook violated North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1. That claim was not asserted in the complaint and will not be considered by the court.

[2] Plaintiffs have also filed a motion [18] entitled "Motion to Continue with the Pretrial Conference." In light of the court's ruling on the motion to dismiss, Plaintiffs' motion and Stoneybrook's motion to strike will be dismissed as moot.

The facts as stated in the complaint are as follows. Plaintiffs lived at Stoneybrook Apartments. Stoneybrook filed two unsuccessful actions in states court to recover rent from Plaintiffs. Stoneybrook reported Plaintiffs' debt to the Credit Bureau. Plaintiffs discovered this when they requested a copy of their credit report in connection with buying a home.

Plaintiffs asked Stoneybrook to delete the nonpayment of rent, and Stoneybrook complied. (Compl. ¶ 13.) When applying for a job, Mr. Banks agreed to let the potential employer check his credit history. Mr. Banks alleges that he "did not know that Stoneybrook Apt. was up there but they were stating that Elder Lewis Banks owed them $1,284.25." (Compl. ¶ 13.) The employer did not offer Mr. Banks a job. Id. Plaintiff argues that Stoneybrook acted willfully in reporting him to the Credit Bureau to destroy his reputation and credit standing.

DISCUSSION

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court accepts all well-pleaded allegations as true and draws all reasonable inference in the plaintiff's favor. Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999) (citation omitted). A 12(b)(6) motion should only be granted when the plaintiff can prove no set of facts in support of his claim entitling him to relief. Id.

If the plaintiff alleges a claim under a statute that does not support such a claim, a motion to dismiss is properly granted. Plaintiffs have alleged that the actions of Stoneybrook in reporting past-due rent to the Credit Buerau violated the FCRA. Plaintiffs point to no specific provisions of the FCRA that Stoneybrook violated. Stoneybrook argues the

FCRA does not support a private cause of action for the Plaintiffs' claim.

A central purpose of the FCRA is to ensure the confidentiality and accuracy of consumer credit information and to require that reasonable procedures are in place to meet those goals. 15 U. S. C. § 1681(b) ; Washington v. CSC Credit Serv. , Inc., 199 F.3d 263, 265 (5th Cir. 2000).

Under the FCRA, Congress imposed obligations on three entities: (1) consumer reporting agencies, see 15 U.

S. C. § 1681(b), 1681b-1681l; (2) users of consumers, reports, see 15 U. S. C. § 1681m; and (3) furnisher of information to reporting agencies, see 15 U. S. C. § 1681s-2.

The FCRA defines a "consumer reporting agency" as "any person which, for monetary fees... regularly engages in...assembling or evaluating consumer credit information... for the purpose of furnishing consumer reports to third parties...." 15 U. S. C. § 1681a(f).

This definition implicates more that just being in prossession of credit information and forwarding information about that debt. DiGianni v. Stern's, 26 F.3d 346, 349 (2d Cir. 1994) (citation omitted).

Plaintiffs do not allege that Stoneybrook regularly engages in evaluating credit information or is a consumer reporting agency. Stoneybrook is an apartment complex. The statute also defines a "consumer report" and excludes from that definition any "report containing information solely as to transactions or experiences between the concumer and the person making the report." 15 U. S. C. § 1681a(d)(2)(A)(i).

In regulating users of consumer reports, section 1681m requires those who take adverse action against a consumer based on a consumer report to (1) provide notice of the action to the consumer; (2) provide to the consumer information about the consumer reporting agency; and (3) notify the consumer of his right to obtain and dispute the consumer report.

Plaintiffs make no allegation that Stoneybrook did anything other than report information about its dealings with Plaintiffs. Therefore, Stoneybrook is not a "consumer reporting agency" or a "user of consumer reports," as the FCRA defines those terms. Plaintiffs have failed to state a claim under 15 U. S. C. § 1681b-1681m.

Plaintiffs' allegations focus on Stoneybrook's reporting of Plaintiffs' debt for past-due rent to the Credit Bureau. Section 1681s-2 imposes two obligations on furnishers of information to consumer reporting agencies: (1) to provide accurate information, ." 15 U. S. C. § 1681s-2(a), and (2) to conduct an investigation regarding the accuracy of

information sent to a consumer reporting agency upon notice of a dispute, ." 15 U. S. C. § 1681s-2(b).

Plaintiffs allege that Stoneybrook misreported the rent Plaintiffs owed for August and September 1997. Stoneybrook asked the Credit Bureau to remove some of Plaintiffs' debt from its records in October 1997 and in May 1999 requested all debt owed by Plaintiffs be removed.

When Mr. Banks later applied for a job, he was allegedly turned down because his credit report showed debt owed to Stoneybrook. Even if Plaintiffs' allegations establish a violation of Stoneybrook's duty to provide accurate information, the FCRA exempts Stoneybrook from liability under sections 1681n and 1681o, which impose civil liability against any person for violating the requirements established by the FCRA.

The FCRA limits the enforcement of violations under section 1681s-2(a) to certain federal and state officers. see 15 U. S. C. § 1681s-2(c) & (d). There is no private right of action for individuals. Carney v. Experian Information Solutions, Inc. 57 F. Supp. 2d 496, 501-02 (W.D. Tenn. 1999).

Holding that an individual could not sue a furnisher of information for violations of § 1681s-2(a) under § 1681n-o). Since Plaintiffs have no private cause of action for violations of § 1681s-2(a), they have failed to state a claim for relief.

Section 1681s-2(b) imposes liability on a furnisher of information only if the furnisher received notice, pursuant to section 1681i (a)(2), of incomplete or inaccurate information the furnsher provided. Section 1681i (a)(2) requires a consumer reporting agency to notify the furnisher of information of a dispute once the consumer makes an objection to the agency.

Plaintiffs have not alleged they contacted the Credit Bureau to contest the amount shown on their consumer report or that Stoneybrook received such notice. In fact, Plaintiffs admitted in their complaint that Stoneybrook asked the Credit Bureau to remove any information which showed Plaintiffs owing it money.

Therefor, Plaintiffs have failed to state a claim for A judgment in accordance with this memorandum opinion shall

be filed contemporaneously herewith.

This the __1__ day June 2000.

s/William L . Osteen
United States District Judge

APPENDIX-F
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

August 05, 1999

Lewis Banks
3204 Anvil Pl.
Greensboro, NC 27407

Re: FTC Ref No. 699720

Dear Lewis Banks

This is a response to your complaint concerning inaccurate information that is included in your credit report. We have enclosed a brochure that addresses your concerns. We believe it will answer your questions.

We can not act as your lawyer or intervene in a dispute between a consumer and a credit bureau or between a consumer and a creditor or furnisher of information. The private enforcement provisions of the FCRA permit the consumer to bring a civil suit for willful noncompliance with the Act .

You may receive actual damages or punitive damages up to $1,000 for willful noncompliance (Section 616). You may also sue for negligent noncompliance and recover actual damages sustained by you (Section 617). Attorney's fees, as determined by the court, will be allowed for both forms of action.

Thank you for writing to the Commission, I hope the information we have provided is helpful.

Sincerely,

APPENDIX – G
ADAM KLEEMEIER HAGAN HANNAH
& FOUTS PLLC

DATE
June 28, 1999

Mr. Lewis Banks
3204 Anvil Place
Greensboro, North Carolina 27407

Re: Credit Bureau Information Service/Stoneybrook Apartments

Dear Mr. Banks:

The firm represents Credit Bureau of Greater Greensboro, Inc., doing business as Credit Bureau Information Services ("CBIS). It is our understanding that you have requested from CBIS a letter concerning the chain of events surrounding Stoneybrook Apartment's ("Stoneybrook") reporting a delinquent account to Credit Bureau for addition to your credit file.

Our review of the file shows that in August 1997, Stoneybrook reported to Credit Bureau an account owed to Stoneybrook by you in the amount of $1,284.00. Our records do not reflect that we received any subsequent request for changes from Stoneybrook in 1997 or 1998.

CBIS never included on your credit file the initial judgment that Stoneybrook obtained against you; therefore, Credit Bureau would not have noted any dismissal of that judgment. The Stoneybrook entry on your credit file pertained purely to a delinquent account and not to any court action.

We received notification from you on May 6, 1999 that you disputed the Stoneybrook entry and contended that your account with Stoneybrook should reflect a zero balance. CBIS promptly began investigation your dispute, simultaneously with Credit Bureau's investigation.

On May 10, 1999, Abby Garrison from Stoneybrook conacted CBIS and instructed CBIS at that time to remove the Stoneybrook account number 242-D from the credit files of you and your wife, Beverley Banks. Accordingly, based upon your dispute and Ms. Garrison's request the Stoneybrook account was removed from your and your wife's credit files.

I hope this has provided you the information you requested. If you should have any further concerns, please feel free to call me. I will be out of the office for the most part through July 12, 1999, but please feel free to leave me a voice mail message and I will promptly return your cal! when I return to the office.

With kind regards, I am,

Very truly yours

Adams Kleemeier Hagan Hannah
& Fouts Professional Limited
Liability Company

"s/ D. Beth Langley"

APPENDIX -H

STATE OF NORTH CAROLINA IN THE GENERAL
COURT COUNTY OF GUILFORD OF JUSTICE DISTRICT
DIVISION SMALL CLAIMS

FILES NO. 97CVM14386

FILED; 97 AUG 15 AM 10:46

STONEYBROOK APARTMENTS
Plaintiff,

v.

COMPLAINT IN
SUMMARY EJECTMENT

LEWIS and BEVERLEY BANKS,
Defendants.

Description of Premises : 242-D Webster Road.

Rate of Rent: $605.00 per Month, Date of Rent Due: 1st.

Date Lease Ended: MTM, Type of Lease: Written.

3. [x] The Defendant fail to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.

Description of Breach: Non-payment of Rent.

Description of Any Property Damage: late fee,

Amount of Damage: $30.25 Amount of Rent Past Due: $605.00,

Total Amount Due: $635.25 + Cost, Date: 8-15-97

Signature of Plaintiff: "s/Abby Garrison"

APPENDIX-I

STATE OF NORTH CAROLINA IN THE GENERAL COURT COUNTY OF GUILFORD OF JUSTICE DISTRICT DIVISION SMALL CLAI FILES NO.97CVM14386

Filed No. 97-194.62

FILED; 97 AUG 25 AM 11:33

STONEYBROOK APARTMENTS
Plaintiff,

v.

JUDGMENT IN ACTION FOR SUMMARY EJECTMENT

LEWIS and BEVERLEY BANKS,
Defendants.

THE COURT FINDS THAT

[X] The Plaintiff has failed to prove the case by the greater weight of the evidence.

[x] Other: That this action be dismissed without prejudice.

Rate of Rent: $605.00 per Mo., Amount of Rent Owed To Date: 0,

[x] Judgment Announced And Signed In Open Court,

Amount of Other Damages: 0, Total Amount: 0,

Date: 8-25-97, Signature of Magistrate: s/Herny Mebane Jr.

APPENDIX – J

STATE OF NORTH CAROLINA IN THE GENERAL COURT COUNTY OF GUILFORD OF JUSTICE DISTRICT DIVISION 97 CVD 8978 SMALL CLAIMS FILES NO.97CVM14773

STONEYBROOK APARTMENTS
Plaintiff,

v. ORDER OF JUDGMENT

LEWIS and BEVERLEY BANKS,
Defendants.

THIS CAUSE coming on to be heard, and being before the undersigned District Court Judge, upon motion of Plaintiff, Stoneybrook Apartments to dismiss Defendants' Counterclaim pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure; and upon hearing the arguments of counsel for Stoneybrook, and the arguments of the Defendant Lewis Banks, this Court finds as follows:

1, At the hearing, Defendant Lewis Banks presented evidence regarding both his and his wife's counterclaim against Stoneybrook, as well as Stoneybrook's claim for back rent.

2, This Court, in its discretion, will treat Mr. Bank's argument as an oral motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

3, Counsel for Stoneybrook also presented evidence regarding Defendant's counterclaim, and, therefore, this Court pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, will treat Stoneybrook's Motion to Dismiss Defendants' Counterclaim as a Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure.

4, Upon considering all of the evidence and arguments before it, the Court finds that equity governs neither party have and recover any further amounts from the other.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment as

to Defendants' Counterclaim is hereby granted, and that Defendants' Counterclaim is hereby dismissed with prejudice; and

IT IS FURTHER ORDER ADJUDGED AND DECREED that Deffendant's Motion for Summary Judgment be granted in part, and denied in part, in that Plaintiff is entitled to retain all monies recovered in Small Claims Court below, but its claim is dismissed, with prejudice, as to any additional amounts.

SO ORDERED this the 13 day of March, 1998.

s/ Patrice A Hinnant"
The Honorable Patrice Hinnant
District Court Judge Presiding

APPENDIX – K

STONEYBROOK
258-Webster Road
Greensboro, N.C. 27406
Office 910-370-4494
Fax 910-370-0417

April 2, 1998

Rev. Lewis and Beverly Banks

RE: Balance owed to Stoneybrook Apartments

Rev. and Beverly Banks:

This is to verify that your balance owed to Stoneybrook Apartments is zero and your account at Stoneybrook Apartment is closed

If further information is needed please call me 370-4494.

Sincerely

"s/ Sue Kline"

Assisant Manager